

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN JOHN C. BOHLINGER**, on March 25, 2003  
at 3:15 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. John C. Bohlinger, Chairman (R)  
Sen. John Esp, Vice Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Brent R. Cromley (D)  
Sen. Jim Elliott (D)  
Sen. Kelly Gebhardt (R)  
Sen. Bill Glaser (R)  
Sen. Rick Laible (R)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** Sen. Jeff Mangan (D)

**Staff Present:** Leanne Kurtz, Legislative Branch  
Phoebe Olson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted:

Executive Action: HB 512; HB 712; HB 269

**EXECUTIVE ACTION ON HB 512**

**Motion:** SEN. GEBHARDT moved that HB 512 BE CONCURRED IN.

**Motion:** SEN. WHEAT moved that AMENDMENT HB051201.ALK DO PASS.

**Discussion:**

**Leanne Kurtz** explained the amendment had been requested by Senator Bohlinger and Senator Laible and it reflected what Harold Blattie had handed out in the hearing. She thought it made it more clear that the provisions of 76-2-101 and all of part one would apply to the addition of territory to a zoning district, so that whatever happens with the percentage of free holders that exists in Senator Laible's bill in the House would apply to the addition, so that the creation and addition would have the same percentage of people who petition to have it done and the protest provisions.

**SENATOR CAROLYN SQUIRES** asked if this was the bill that had 85% in it.

**Leanne Kurtz** replied that **Senator Laible's** bill had the 85% requirement in it. With this amendment whatever happens with 76-2-101 would apply to HB 512.

**SENATOR SQUIRES** said so it would take 85% of the freeholders to make a decision.

**SENATOR MIKE WHEAT** maintained only if the other bill passed and was signed by the governor, otherwise this bill would stay at what was in statute.

**SENATOR SQUIRES** said it made a difference to her whether it was 85% or 65%.

**SENATOR WHEAT** said they no longer had control over that bill, they were just saying if you had a piece of property that was directly adjacent to an existing district, whatever those percentages were when the session was over would apply.

**SENATOR SQUIRES** asked if they were saying she would just have to take a chance on what happened to the other bill in the House.

**SENATOR WHEAT** said as he understood it, the bill in the House and this bill both amended 76-2-101

**Leanne Kurtz** explained this bill did not amend that section, HB 512 created a new section that said the provisions of 76-2-101 would apply.

**SENATOR SQUIRES** wanted to clarify that if **Senator Laible's** bill passed in the house, the 65% in HB 512 would change to 85%.

**Leanne Kurtz** replied that was her understanding if this amendment passed.

**SENATOR SQUIRES** asked if **Senator Laible** knew the status of his bill in the House.

**SENATOR RICK LAIBLE** said it had not been presented in the House yet.

**SENATOR SQUIRES** asked when it would be presented.

**SENATOR LAIBLE** said April 3.

**SENATOR SQUIRES** asked if they could hold this bill.

**SENATOR BILL GLASER** said he didn't think they could hold it very long.

**SENATOR WHEAT** asked if HB 512 passed would it be incorporated into 76-2-101.

**Leanne Kurtz** replied no it would not be put in that section. It would be a new section, but it would be in Title 76, Chapter 2, part 1.

**SENATOR WHEAT** said the amendment would make the percentages in HB 512 the same as they would be in 76-2-101 whether **Senator Laible's** bill passed or not.

**Leanne Kurtz** said that was correct.

**SENATOR WHEAT** said if we don't pass this amendment and **Senator Laible's** bill did pass, there would be different percentages.

**Leanne Kurtz** replied that was correct.

**SENATOR WHEAT** said he wasn't going to vote for the amendment. He said he would rather the 60% stayed in this bill.

**SENATOR KELLY GEBHARDT** said he did not think it was a good idea to have inconsistencies in the code. He recommended they keep it uniform.

**SENATOR WHEAT** said the problem with that was if **Senator Laible's** bill passed, then you had to have 85% of the people approve before you could create a new district. He said that would kill any new districts. He said he didn't care if one was 85% and one was 60%.

**SENATOR LAIBLE** asked if they were amending it to reflect what was in statute.

**SENATOR WHEAT** said that was what this amendment was doing.

**SENATOR GEBHARDT** said this only took a 40 acre track of land so 85% would be 34 acres. He thought it was a small parcel of land. He did not think this would involve a lot of people and it probably wasn't that unreasonable.

**SENATOR LAIBLE** said no matter what happened everything would stay the same.

**SENATOR WHEAT** said he understood that, he wanted this to stay at 60% no matter what happened to **Senator Laible's** bill.

**Vote:** Motion carried 5-4 with **CROMLEY, MANGAN, SQUIRES, and WHEAT** voting no.

**Motion/Vote:** SEN. GEBHARDT moved that HB 512 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

#### EXECUTIVE ACTION ON HB 712

**Motion:** SEN. LAIBLE moved that HB 712 BE CONCURRED IN.

**Leanne Kurtz** explained there were three separate amendments they could look at.

**Motion:** SEN. LAIBLE moved that AMENDMENT HB71202.ACE DO PASS.

#### Discussion:

**SENATOR LAIBLE** said it appeared that this would exclude counties and clarify regulations and ordinances that are in effect at the time of submission.

**SENATOR GLASER** asked how this would effect the Silverbow and Anaconda area.

**Leanne Kurtz** replied that the definition stated consolidated governments, so it did cover those areas.

**Vote:** Motion carried unanimously.

**Motion:** SEN. LAIBLE moved that AMENDMENT HB71203.ACE DO PASS.

**Discussion:**

**Leanne Kurtz** said the sponsor could probably explain the amendment for the committee.

**REPRESENTATIVE JOHN SINRUD** explained that the state asked that this be put in to deal with septic systems. He stated the minimum requirement was a one acre lot with a single family home, or one septic system.

**Vote:** Motion carried unanimously.

**Motion:** SEN. LAIBLE moved AMENDMENT 71204.ACE .

**Discussion:**

**SENATOR LAIBLE** said this had come up in the committee hearing that there is confusion about what the word "refuses" means. This changes that word to fail.

**Vote:** Motion carried unanimously.

*{Tape: 1; Side: B}*

**Motion:** SEN. LAIBLE moved that HB 712 BE CONCURRED IN AS AMENDED.

**Discussion:**

**SENATOR GEBHARDT** said in new section 4, on page 3, on line 10, it remains vested for a minimum of two years. He said if this law was passed, he did not know that are law would supercede. He said it appeared to him that should be contingent on state or federal law.

**SENATOR GLASER** said he had a good deal of knowledge in this area. He maintained nursing homes and hospitals were a whole different ball game. He said some buildings are still inspected under the 1967 code. He said as long as life safety 101 was met. He said federal law allowed for buildings to change for life safety 101 to be met.

**SENATOR GEBHARDT** maintained nursing homes and hospitals were not excluded in this bill.

**SENATOR GLASER** said that was true, they had not taken into account the federal jurisdiction.

**SENATOR LAIBLE** asked if they had to deal with that or if it would automatically take place.

**SENATOR GLASER** said then there was a dual requirement, one in state statute and one in federal statute. He said there could be a conflict because of the federal jurisdiction.

**SENATOR LAIBLE** asked if that would have to be addressed in each individual statute that deals with the possible development of land.

**SENATOR GLASER** said it would addressed by the department that has the responsibility of inspecting the building. He said they could work half time for the state and half for the federal government. He maintained it was a confusing area of the code.

**SENATOR LAIBLE** said he thought in section four it was discretionary to local government. He thought the local government could extend it past two years.

**SENATOR GEBHARDT** replied that if you put that in statute you might be setting yourself up for conflict. He said he understood where the sponsor was coming from. He did not think changing the game ten minutes after it started was either. He thought there was the possibility this bill was not real clear.

**SENATOR LAIBLE** said he did not think it was fair for a city or town to change the rules because the did not like a project. He maintained that if someone based a proposal on regulations and ordinances, then it should be good.

**SENATOR ELLIOT** said he thought everything was hypothetical. He wondered if there was an actual example.

**REPRESENTATIVE SINRUD** replied that Walmart, Lowes, and a county commissioner Jennifer Smith Mitchell, all had lawsuits against

the city. He said this would limit a city from putting their opinion on design without first having it in statute.

**SENATOR ELLIOT** said it sounded like one would have to have every architectural style in statute. He said the people who are elected need to be able to make some sort of judgement.

**REPRESENTATIVE SINRUD** said he wondered how appropriate it was for one to make a judgement call on something that was not in law, and hinder another from building an addition, or re-roofing their home. The courts said it was illegal and inappropriate for the city of Bozeman to do that. He gave an example that he had gone through the preliminary application process to build some town houses with tandem garages. The city of Bozeman maintained they did not like tandem garages, but in their statute for single family homes, town homes, and condos they allow for tandem garages. He wondered what recourse he had with the city but to sue them for violating their own code.

**SENATOR CROMLEY** said he still did not see a need for this. He said that people were winning their lawsuits. He said he had a lot of concern about unintended consequences, that once an application was made, no matter what it was for, this gives the applicant a vested right, which takes away the communities ability to object to certain projects.

**SENATOR BLACK** said this bill bothered him a little as well. He said several of his county commissioners had expressed displeasure with it. He said that when the sponsor explained the bill did not effect counties, it relieved his apprehension; however he had gotten word from one of his mayors that he was opposed to it, and he had considerable respect and highly regarded this mayors opinion. He said he noticed that Alec Hansen had spoke against the bill. He wondered if the amendments had eased his apprehension towards the bill.

**Alec Hansen** said he hadn't had a chance to read the amendments, so he was just basing his comments on the committee discussion. He said he did not think the amendments changed there position and they were still strongly opposed to the bill. He believed there was case law to take care of the problems.

**SENATOR LAIBLE** asked if this was a problem that was being solved in the court process, why they would hesitate to put it into statute to prevent it from going to court. He thought it would be more cost effective for cities and towns if they did not have to litigate cases.

**Alec Hansen** said the bill went farther than that. He said he was concerned about what this did to emergency zoning and other complications, or unintended complications.

**SENATOR LAIBLE** asked if a community was zoned for sin, are developers allowed to build a sin parlor there.

**Alec Hansen** said he thought what the city manager from Bozeman was talking about in that regard, was if there was some loop hole or glitch in the zoning ordinance and somebody plans to put something like that in, you have under state law some emergency zoning authority to deal with these emergency conditions, and that would disappear under this bill as he understood it.

**SENATOR LAIBLE** asked if you had an area zoned for retail, would the city have any recourse for someone who wanted to open an adult bookstore.

**Alec Hansen** said under emergency zoning authority they could have some recourse.

**SENATOR LAIBLE** asked if he would still be opposed to the bill if the amended the bill to say adult oriented business would not be allowed.

**Alec Hansen** said they would still be against the bill. That was just one of the concerns expressed by the cities.

**SENATOR GLASER** asked the sponsor if he would like to save page 3, lines 5, 6, and 7.

**REPRESENTATIVE SINRUD** said the intent of the bill was to allow people to submit a project and maintain under those existing zoning rules and regulations the ability to move forward with the construction process, and the approval and application process. He said if the committee thought those lines would accomplish that and eliminate the lawsuits they currently have, he would accept that. He said this bill was not intended to hinder life safety issues or the UBC. He said it was intended to make sure when somebody submits a project under the existing law, that the approval process would go through smoothly. He thought this directly effected urban sprawl. He wanted to prevent that and make it simpler and easier to build within the city limits. If the amendment would accomplish all that he would agree with it.

**{Tape: 2; Side: B}**



**SENATOR GEBHARDT** asked what problems Walmart had run into. He wondered if they were related to traffic issues or to the type of building or what the problem was.

**REPRESENTATIVE SINRUD** said Walmart wanted to become a Super Walmart. The city of Bozeman placed a sense of loss of community on Walmart. He said the city decided to charge them 25 million dollars in impact fees and then maintain thereafter 1 million dollars a year to run transportation from Walmart to Downtown Bozeman. Walmart threatened to sue, and they are finally getting approval five years later. Home Depot and Lowes submitted applications almost simultaneously. Home Depot got approved and Lowes fell under the moratorium on big box stores. He said it did not seem fair. This bill was never intended to eliminate emergency zoning.

**SENATOR GEBHARDT** asked if cities and towns had growth policy or if that was just a county thing.

**REPRESENTATIVE SINRUD** said he thought it was in statute that cities had to have growth policy done by a certain time. He believed Bozeman had a growth policy called 20/20.

**SENATOR GEBHARDT** said so it would be appropriate to leave growth policy in.

**REPRESENTATIVE SINRUD** said absolutely.

**SENATOR GEBHARDT** said you could have a situation where one was approved and one was not because something could have changed in that time period.

**REPRESENTATIVE SINRUD** said theoretically, but the applications went in only a week apart. There needed to be a time limit from when you submit an application and were able to build under existing laws.

**SENATOR SQUIRES** said local governments needed to take care of these problems at home. She maintained it was a long drawn out process, and would involve electing officials that thought differently. She said she was not comfortable with this bill.

**SENATOR GLASER** said he did have one comment on page four.

**Motion:** **SEN. GLASER** moved a **CONCEPTUAL AMENDMENT** that would strike everything on line five after the word "to", and replace it with "the applicable codes and standards".

**Leanne Kurtz** read the amendment, "including but not limited to the applicable codes and standards".

**SENATOR CROMLEY** made sure he read the amendment right.

**SENATOR GLASER** repeated the amendment.

**SENATOR CROMLEY** said he thought he agreed with what he was wanting to do; to take out fire, plumbing, electrical and mechanical and just leaving it building.

**SENATOR GLASER** replied that you have included in the definition applicable building codes and standards, so all those other codes would be included if they had been adopted by the state and city, which they have been.

**SENATOR CROMLEY** said they would all be part of the applicable building codes.

**SENATOR GLASER** replied yes.

**SENATOR CROMLEY** said he disagreed because he did not think electrical code was necessarily applied to buildings.

**SENATOR GLASER** said the National Electric Code was a building code in standard, and did not go out on the utility lines, they were a group of non-related standards.

**SENATOR CROMLEY** said he did think there were electrical codes outside building codes.

**SENATOR GLASER** said yes there were, but they were not applicable to buildings.

**SENATOR CROMLEY** said he was thinking that this bill was not limited to buildings. He maintained if a power company was applying to run a transmission line through, there would be no building involved.

**SENATOR GLASER** said the statement applicable codes and standards would pertain to whatever was applicable to that project.

**Vote: Motion carried 6-1 with CROMLEY voting no.**

**SENATOR LAIBLE** said he was in favor of the bill. He thought the rules of the game should stay consistent.

**SENATOR GEBHARDT** said he was concerned with the vested interest. He thought it would end up in court anyway. He thought it was to

broad and would cause problems and he thought the bill should still be narrowed down considerably.

**Leanne Kurtz** said she did not think the changes that were discussed could stand on their own without a lot of the other language. Section 3, subsection 1 and 2 discuss the site specific development plan and the submission and review of that, so she thought having Section 3 out there in a vacuum would not work. She did not think it would fit within the scope of the title either.

**SENATOR CROMLEY** made clear the title did one thing, the verb established a vested property right. He did not think it could be changed.

**SENATOR LAIBLE** said he would be ok waiting on it for a day, to see if the problems could be solved.

**SENATOR GEBHARDT** said the biggest problem he saw with the bill was the vested property right, and because it was in the title, he did not think it could be fixed.

**SENATOR LAIBLE** wondered if in the existing statutes, you couldn't find a place to tag that one paragraph on.

**SENATOR WHEAT** said you had a problem with the title of the bill

**SENATOR SQUIRES** said she did not like when the patch quilted legislation at the very end. She thought they should listen to Leanne's suggestion.

Vote: Motion failed 3-8.

Motion/Vote: SEN. ELLIOTT moved that HB 712 BE INDEFINITELY POSTPONED. Motion carried 8-3 with ESP, GLASER, and LAIBLE voting no.

Motion: SEN. CROMLEY moved that HB 269 BE CONCURRED IN.

Motion: SEN. GEBHARDT moved that AMENDMENT HB26902.ALK DO PASS.

**SENATOR GEBHARDT** said during the discussion the question came up whether this would effect the accreditation of the schools. He referred to the handout he submitted. **EXHIBIT(1os63a01)**

{Tape: 2; Side: B}

Vote: Motion carried unanimously.

Motion/Vote: SEN. GEBHARDT moved that HB 269 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 4:50 P.M.

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SEN. JOHN C. BOHLINGER, Chairman

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PHOEBE OLSON, Secretary

JB/PO

**EXHIBIT** (los63aad)